

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

Case No. 1:19-CV-386

MARY SMITH, as Administrator of the  
ESTATE OF MARCUS DEON SMITH,  
deceased,

Plaintiff,

v.

CITY OF GREENSBORO, Greensboro  
Police Officers JUSTIN PAYNE,  
ROBERT DUNCAN, MICHAEL  
MONTALVO, ALFRED LEWIS,  
CHRISTOPHER BRADSHAW, LEE  
ANDREWS, DOUGLAS STRADER, and  
JORDAN BAILEY, and Guilford EMS  
Paramedics ASHLEY ABBOTT and  
DYLAN ALLING,

Defendants.

**DEFENDANTS' JOINT  
MOTION TO SEAL**

Pursuant to the Protective Order, (Dkt. 79, ¶ 19), and Local Rule 5.4, Defendants jointly and respectfully request that the Court seal the 23 April 2021 letter from Plaintiff's counsel of record Flint Taylor to Defendants' counsel. The letter has been prospectively filed under seal as Exhibit S to the brief in support of Defendants' joint motion to show cause or for other relief with respect to potential violations of Protective Order and Local Rules. In support of this motion, Defendants show the Court the following:

1. In recent weeks, counsel for the parties have discussed conduct by Plaintiff's counsel of record and their agents which appears to violate the Protective Order and the Local Rules, including the Court's Code of Professional Responsibility. This conduct includes the release of discovery materials for a non-litigation purpose and pretrial public commentary with a substantial likelihood of materially prejudicing an adjudicative proceeding. These issues are discussed in depth in Defendants' concurrently-filed joint motion to show cause or for other relief with respect to potential violations of the Protective Order and Local Rules.

2. In the course of the discussions preceding the filing of the motion, Plaintiff's counsel of record Flint Taylor sent a letter to Defendants' counsel. Because this letter is relevant to the matters presented in the concurrently-filed motion, Defendants have submitted it to the Court as Exhibit S.

3. Mr. Taylor's letter has been prospectively filed under seal pursuant to the Protective Order. The letter includes a lengthy discussion of and references to discovery material, including material that constitutes "Confidential Information." Those parts of the document are therefore deemed "Confidential Information" as well under the Protective Order. (Dkt. 79, ¶ 11.) Such information must be filed under seal consistent with Local Rule 5.4. (Dkt. 79, ¶ 19.)

4. More significantly, Mr. Taylor's letter was admittedly intended to inject additional discovery material into the public record, consistent with the ongoing campaign by Plaintiff's counsel to release discovery material. The public filing of such a

letter would therefore not be consistent with the Protective Order's prohibition on the non-litigation use of discovery material and information, which is one of the key issues addressed in the concurrently-filed motion. (Dkt. 79, ¶ 10.) Because Defendants' counsel do not want to sponsor further violations of the Protective Order, but do believe the letter is helpful to the Court's consideration of the issues presented, a sealed filing is the only available method to follow the Protective Order.

**WHEREFORE**, Defendants jointly and respectfully request that the Court maintain under seal Exhibit S to the brief in support of Defendants' joint motion to show cause or for other relief with respect to potential violations of Protective Order and Local Rules.

This the 12th day of May, 2021.

/s/ Alan W. Duncan

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing document was electronically filed with the Clerk of Court through the CM/ECF system, which will send notice of filing to counsel of record.

This the 12th day of May, 2021.

/s/ Alan W. Duncan \_\_\_\_\_  
Alan W. Duncan